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In re Application of	:	
SPIEGEL, et al.	:	DECISION ON REQUEST
Application No.: 10/031,777	:	
PCT No.: PCT/DE00/02437	:	UNDER 37 CFR 1.497(d)
Int. Filing Date: 24 July 2000	:	
Priority Date: 23 July 1999	:	
Attorney Docket No.: SPIEGEL-3	:	
For: KITCHEN MIXING UNIT FOR	:	
PRODUCING SODA WATER	:	

This decision is in response to applicant's "Submission in Response to Notification of Defective Response And Declaration of Inventor Pursuant to 37 CFR §1.497" filed 21 August 2002.

BACKGROUND

On 24 July 2000, applicant filed international application PCT/DE00/02437, which claimed priority of an earlier application filed 23 July 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 01 February 2001. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 23 January 2002.

On 23 January 2002, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 01 April 2002, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was also notified of the need to pay the \$65.00 surcharge for providing the oath or declaration later than 30 months from the earliest claimed priority date. In addition, applicant was notified of the need to file a translation of the International Application into English along with payment of the processing fee for providing the translation later than thirty months from the priority date. Applicant was given two months to respond and advised that this time period could

be extended with a proper petition and payment of fees.

On 11 June 2002, applicant filed a response which included a combined declaration and power of attorney executed by Pasquale SPIEGEL and Margret SPIEGEL.

On 16 July 2002, applicant was mailed a "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) informing applicant that the declaration filed 11 June 2002 was not in compliance with 37 CFR 1.497 (a) and (b) as the declaration was executed by an individual who was not listed on the international application. Applicant was informed that the declaration was therefore not considered a proper response to the Form PCT/DO/EO/905 mailed 01 April 2002. Applicant was afforded one month from the mailing of the Form PCT/DO/EO/916 or within the time remaining in the response set forth in the Form PCT/DO/EO/905, whichever was longer.

On 21 August 2002, applicant responded with the present petition and an executed statement from inventor Pasquale SPIEGEL.

DISCUSSION

A request under 37 CFR 1.497(d) [formally, 37 CFR 1.48] to correct an error in naming inventorship requires:

- (1) a petition including a statement from each person being added or deleted as an inventor that the error in inventorship occurred without any deceptive intention on his or her part;
- (2) an oath or declaration by the actual inventor(s) as required by 37 CFR 1.63;
- (3) the fee set forth in 37 CFR 1.17(i); and
- (4) if an assignment has been executed by any of the original named inventors, the written consent of the assignee in compliance with 37 CFR 3.73(b).

As to Item (1), applicant has provided a statement from Pasquale SPIEGEL declaring that he is an inventor for the present application and avowing that the error in inventorship occurred without deceptive intent.

Regarding Item (2), applicant has previously filed a combined declaration and power of attorney executed by Pasquale SPIEGEL and Margret SPIEGEL.

As Item (3), as authorized the \$130.00 petition fee will be deducted from Deposit Account No.: 06-0502.

Regarding Item (4), as noted by counsel, no assignment has been filed.

As such, applicant has satisfied all four items detailed above and it is proper to grant applicant's petition at this time.

CONCLUSION

For the reasons discussed above, the request under 37 CFR 1.497(d) is **GRANTED**.

As authorized, \$130.00 will be deducted from Deposit Account No.: 06-0502 as payment of the petition fee.

A review of the application papers reveals that applicant has now completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be given an international application filing date of **24 July 2000** and a date of **11 June 2002** under 35 U.S.C. 371.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision



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